

CCRB INVESTIGATIVE RECOMMENDATION

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|--|-------------------------------------|-------------------------------------|---|------------------------------------|--|
| Investigator: William MacLure | Team: Squad #6 | CCRB Case #: 201710040 | <input checked="" type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Saturday, 03/25/2017 2:32 AM | Location of Incident: § 87(2)(b) | Precinct: 90 | 18 Mo. SOL 9/25/2018 | EO SOL 9/25/2018 | |
| Date/Time CV Reported Fri, 12/01/2017 4:15 PM | CV Reported At: CCRB | How CV Reported: On-line website | Date/Time Received at CCRB Fri, 12/01/2017 4:15 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------------|--------------|
| § 87(2)(b) | § 87(2)(b) | § 87(2)(b) |
| § 87(2)(b) | § 87(2)(b) | § 87(2)(b) |
| § 87(2)(b) | § 87(2)(b) | § 87(2)(b) |

| Witness(es) | Home Address |
|-------------|--------------|
| § 87(2)(b) | § 87(2)(b) |

| Subject Officer(s) | Shield | TaxID | Command |
|--------------------------|--------|--------|---------|
| 1. POM Michael Caccavale | 06100 | 948728 | 090 DET |
| 2. POM Carlos Zambrano | 26943 | 939814 | 090 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|-------------------------|--|-----------------------------|
| A.POM Michael Caccavale | Abuse: Police Officer Michael Caccavale refused to provide his name or shield number to § 87(2)(b) | § 87(2)(b) |
| B.POM Michael Caccavale | Abuse: Police Officer Michael Caccavale refused to provide his name or shield number to § 87(2)(b) | § 87(2)(b) |
| C.POM Carlos Zambrano | Abuse: Police Officer Carlos Zambrano refused to provide his name or shield number to § 87(2)(b) | § 87(2)(b) |
| D.POM Michael Caccavale | Force: Police Officer Michael Caccavale used physical force against § 87(2)(b) | § 87(2)(b) |
| E.POM Carlos Zambrano | Force: Police Officer Carlos Zambrano used physical force against § 87(2)(b) | § 87(2)(b) |
| F.POM Michael Caccavale | Force: Police Officer Michael Caccavale used physical force against § 87(2)(b) | § 87(2)(b) |
| G.POM Michael Caccavale | Force: Police Officer Michael Caccavale hit § 87(2)(b) against a vehicle. | § 87(2)(b) |
| H.POM Michael Caccavale | Force: Police Officer Michael Caccavale used a chokehold against § 87(2)(b) | § 87(2)(b) |
| I.POM Michael Caccavale | Force: Police Officer Michael Caccavale restricted § 87(2)(b)'s breathing. | § 87(2)(b) |

Case Summary

On December 1, 2017, § 87(2)(b) filed this complaint with the CCRB online.

On March 25, 2017, at approximately 2:32 a.m., § 87(2)(b) was standing outside § 87(2)(b) in Brooklyn, with § 87(2)(b) and § 87(2)(b) waiting for a rideshare vehicle. § 87(2)(b) and § 87(2)(b) were holding opaque plastic cups at the time. PO Michael Caccavale and PO Carlos Zambrano of the 90th Precinct exited an unmarked police vehicle and approached § 87(2)(b) and § 87(2)(b) and asked if they were drinking. PO Caccavale asked § 87(2)(b) for his ID. § 87(2)(b) stood between PO Caccavale and § 87(2)(b) and asked PO Caccavale who he was and for him to identify himself. § 87(2)(b) asked PO Caccavale to identify himself. PO Caccavale did not provide his name or shield and continued asking § 87(2)(b) for his ID (**Allegations A and B: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) asked PO Zambrano to identify himself and he did not respond (**Allegation C: Abuse of Authority, § 87(2)(g)**). PO Caccavale attempted to reach around § 87(2)(b) multiple times to retrieve § 87(2)(b)'s ID. Each time, § 87(2)(b) moved in front of PO Caccavale to prevent him from retrieving § 87(2)(b)'s ID. PO Caccavale pushed § 87(2)(b) to the side (**Allegation D: Force, § 87(2)(g)**). PO Zambrano pushed § 87(2)(b) causing her to move backwards (**Allegation E: Force, § 87(2)(g)**). § 87(2)(b) walked over and stood between PO Zambrano and § 87(2)(b). PO Caccavale grabbed § 87(2)(b)'s neck and shoulder and pulled, attempting to bring him to the ground (**Allegation F: Force, § 87(2)(g)**). PO Caccavale lifted § 87(2)(b) off the ground, and charged towards the street, striking § 87(2)(b) against a vehicle (**Allegation G: Force, § 87(2)(g)**). PO Caccavale and § 87(2)(b) fell to the ground. PO Caccavale placed his right knee onto § 87(2)(b)'s throat and his left foot onto § 87(2)(b)'s abdomen, restricting his breathing (**Allegations H and I: Force, § 87(2)(g)**). § 87(2)(b) and § 87(2)(b) were all placed under arrest and transported to the 90th Precinct stationhouse. § 87(2)(b) requested medical attention and was transported to § 87(2)(b).

There was no video footage of this incident because § 87(2)(b) filed this complaint over eight months after the date of incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Michael Caccavale refused to provide his name or shield number to § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Michael Caccavale refused to provide his name or shield number to § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Carlos Zambrano refused to provide his name or shield number to § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on January 19, 2018 (Board Review 01). At approximately 2:32 a.m., § 87(2)(b) and § 87(2)(b) were waiting outside § 87(2)(b) in Brooklyn, for an Uber vehicle to pick them up. § 87(2)(b) and § 87(2)(b) were holding opaque plastic cups. § 87(2)(b) had water in his cup, but did not know what was in § 87(2)(b) cup. § 87(2)(b) initially stated that § 87(2)(b) had a bottle of something, but later stated he did not recall if § 87(2)(b) had a bottle. § 87(2)(b) denied that anyone was drinking while they were waiting outside the building. Approximately two minutes after they exited the building, PO Caccavale and PO Zambrano pulled up in front of the location in an unmarked police vehicle. § 87(2)(b) ran to the curb and waved at the vehicle, thinking it

was their Uber car. PO Caccavale and PO Zambrano exited the vehicle and approached § 87(2)(b) and his friends. While walking towards § 87(2)(b) and his group, PO Caccavale asked them if they were drinking and stated that he smelled alcohol. § 87(2)(b) told PO Caccavale that they were not drinking and that they just left a party where they were drinking. PO Caccavale requested § 87(2)(b) s and § 87(2)(b) IDs, pointing at both of them. § 87(2)(b) was standing and leaning against the building at the time and immediately reached into his pocket to grab his wallet. § 87(2)(b) placed his hand into his front right pants pocket to grab his wallet. § 87(2)(b) stepped between PO Caccavale and § 87(2)(b) and asked PO Caccavale, “Who are you? Identify yourself.” § 87(2)(b) continued to explain that she had a federal job. § 87(2)(b) realized he did not know that PO Caccavale was a police officer so he stopped reaching into his pocket for his ID. § 87(2)(b) asked PO Caccavale to identify himself. PO Caccavale did not respond and reached for § 87(2)(b) with an open palm telling him to provide his ID. PO Caccavale kept trying to reach past § 87(2)(b) towards § 87(2)(b) told PO Caccavale that he would provide his ID to PO Caccavale if he answered § 87(2)(b) question. § 87(2)(b) estimated that he asked PO Caccavale to identify himself at least 15 times during the interaction. § 87(2)(b) stated that § 87(2)(b) asked PO Caccavale to identify himself throughout the entire encounter. PO Caccavale never identified himself to § 87(2)(b) or § 87(2)(b) turned and saw § 87(2)(b) having a conversation with PO Zambrano. § 87(2)(b) could not hear their conversation, but heard § 87(2)(b) ask PO Zambrano to identify himself. PO Zambrano did not identify himself during his interaction with § 87(2)(b) and § 87(2)(b) were all uncooperative with the investigation and did not provide statements regarding this incident.

PO Caccavale was interviewed at the CCRB on April 18, 2018 (Board Review 02). PO Caccavale and PO Zambrano exited their vehicle with their shields displayed around their necks. PO Caccavale and PO Zambrano approached § 87(2)(b) and § 87(2)(b) who smelled like alcohol and were holding red plastic cups. PO Caccavale identified himself as a police officer. When he was about arm’s length from § 87(2)(b) PO Caccavale could smell an odor of alcohol coming from the cup that § 87(2)(b) was holding. PO Caccavale asked § 87(2)(b) for his ID. PO Zambrano was on PO Caccavale’s right side. § 87(2)(b) took his ID out of his pocket and reached his hand out to pass it to PO Caccavale. § 87(2)(b) slapped § 87(2)(b) s hand down and said that PO Caccavale was not a “real fucking cop,” and that she was a government employee and that she could tell he was not a real cop. PO Caccavale told § 87(2)(b) that she could look at his shield and that he worked at the 90th Precinct. PO Caccavale pointed at his shield when he said this. § 87(2)(b) and § 87(2)(b) did not ask PO Caccavale or PO Zambrano for their names or shield numbers or ask the officers to identify themselves further after he stated that he was from the 90th Precinct. PO Caccavale did not verbally provide his name or shield number because they never asked for it. § 87(2)(b) did not ask the officers to identify themselves. PO Caccavale never heard PO Zambrano refuse to provide his name or shield number to anyone.

PO Zambrano was interviewed at the CCRB on April 18, 2018 (Board Review 03). PO Zambrano’s statement was consistent with PO Caccavale’s statement. PO Zambrano did not hear anyone ask PO Caccavale to identify himself. PO Zambrano did not hear PO Caccavale refuse to provide his name or shield number to anyone. None of the individuals in the group asked PO Zambrano to identify himself. PO Zambrano never refused to provide his name or shield number to § 87(2)(b) or § 87(2)(b)

§ 87(2)(g)

Allegation (D) Force: Police Officer Michael Caccavale used physical force against § 87(2)(b)

Allegation (E) Force: Police Officer Carlos Zambrano used physical force against § 87(2)(b)

§ 87(2)(b) (Board Review 01) stated that every time PO Caccavale tried to reach past § 87(2)(b) she would move in front of him and ask who he was. PO Caccavale responded by pushing her to the side, making contact with her arm with one hand. § 87(2)(b) estimated that PO Caccavale pushed § 87(2)(b) at least 10 times. § 87(2)(b) kept telling PO Caccavale to stop touching her and pushed PO Caccavale's hand away. At one point while PO Caccavale was attempting to obtain § 87(2)(b)'s ID, § 87(2)(b) noticed that someone "flew back" approximately one foot, towards the building. § 87(2)(b) turned and saw that PO Zambrano had pushed § 87(2)(b). § 87(2)(b) did not see where PO Zambrano had made contact with § 87(2)(b). § 87(2)(b) told PO Zambrano not to touch her. PO Zambrano pushed § 87(2)(b) a second time in the chest area, causing her to move backwards and hit the wall of the building.

PO Caccavale (Board Review 02) stated that both § 87(2)(b) and § 87(2)(b) were agitated and aggressive throughout the incident, but he was not sure who took which actions. Either § 87(2)(b) or § 87(2)(b) kept putting her hands near PO Caccavale's body and poking his chest while accusing him of not being a real police officer. Either § 87(2)(b) or § 87(2)(b) was slapping PO Caccavale's hands down when he was attempting to reach for § 87(2)(b)'s ID. PO Caccavale pushed § 87(2)(b) or § 87(2)(b) hands down and told her not to touch him several times. Both § 87(2)(b) and § 87(2)(b) were swearing and ranting saying that PO Caccavale and PO Zambrano were not real police officers. Either § 87(2)(b) or § 87(2)(b) pushed PO Zambrano using two hands on his upper chest, causing him to take a couple of steps backwards. PO Zambrano pushed § 87(2)(b) back using both hands with open palms, causing her to take a few steps back, and told her not to touch him. PO Caccavale never pushed either § 87(2)(b) or § 87(2)(b).

PO Zambrano (Board Review 03) stated that he was attempting to obtain § 87(2)(b)'s ID when either § 87(2)(b) or § 87(2)(b) slapped PO Zambrano's hand, stated that she worked for the NSA, and told § 87(2)(b) not to provide his ID. PO Zambrano did not remember if it was § 87(2)(b) or § 87(2)(b) who did this. PO Zambrano pushed § 87(2)(b) or § 87(2)(b) after she slapped his hand. PO Zambrano used his left hand to push the female's shoulder, causing her to move back slightly. PO Zambrano pushed her because she was acting disorderly. PO Zambrano did not remember if he pushed the female additional times.

Four TRI reports prepared regarding force used against § 87(2)(b) and § 87(2)(b) (Board Reviews 04 through 07). The TRI reports were nearly identical, noting that § 87(2)(b) and § 87(2)(b) used hand strikes and pushes against both PO Zambrano and PO Caccavale, and that both officers pushed both females.

The Investigating Supervisor's Assessment Report (Board Review 08) noted that a female got into a "dispute/shoving match" with the officers, but did not specify whom.

The reasonableness of the use of force is based upon the totality of the circumstances known by the MOS at the time of the use of force, Patrol Guide Procedure 221-01, "Force Guidelines" (Board Review 09).

Officers should apply no more than the reasonable force necessary to gain control, Patrol Guide Procedure 221-02, "Use of Force" (Board Review 10).

§ 87(2)(g)

Allegation (F) Force: Police Officer Michael Caccavale used physical force against § 87(2)(b)

Allegation (G) Force: Police Officer Michael Caccavale hit § 87(2)(b) against a vehicle.

§ 87(2)(b) (Board Review 01) got upset after PO Zambrano pushed § 87(2)(b) § 87(2)(b) walked between PO Zambrano and § 87(2)(b) and put his hand up in a stop motion in front of PO Zambrano. § 87(2)(b) was close to PO Zambrano, but denied that he made contact with PO Zambrano. Suddenly, PO Caccavale grabbed § 87(2)(b)'s shoulder and neck from behind and started pulling him towards the middle of the sidewalk. § 87(2)(b) did not initially realize it was PO Caccavale, so he "stood his ground" and planted his feet on the ground. § 87(2)(b) turned around and stood face to face with PO Caccavale. § 87(2)(b) asked PO Caccavale, "What are you doing? You're not stronger than me." PO Caccavale became upset and said, "Oh yeah?" PO Caccavale then attempted to trip § 87(2)(b) by sweeping his right foot behind § 87(2)(b)'s legs and pushed § 87(2)(b) down, making contact with his shoulder and torso. § 87(2)(b) stepped over PO Caccavale's foot, preventing PO Caccavale from bringing him to the ground. PO Caccavale bent down and grabbed both of § 87(2)(b)'s legs behind his knees with one arm. PO Caccavale "charged" § 87(2)(b) lifting him off the ground and running towards the street. § 87(2)(b) bent over PO Caccavale's back and clenched to prepare for impact. § 87(2)(b)'s back and side hit a parked car, near the back door of the vehicle. PO Caccavale and PO Caccavale both rolled over and fell into the street between two parked cars. PO Caccavale flipped § 87(2)(b) from his back onto his stomach and placed him into handcuffs.

PO Caccavale (Board Review 02) stated that, after PO Zambrano pushed either § 87(2)(b) or § 87(2)(b) grabbed PO Zambrano's shoulder. PO Caccavale grabbed § 87(2)(b)'s upper body and turned him around. PO Caccavale told § 87(2)(b) to stop and put his hands behind his back because he was under arrest. § 87(2)(b) told PO Caccavale that he was not big or strong enough. PO Caccavale attempted to put § 87(2)(b)'s hands behind his

back. § 87(2)(b) tightened up and refused to put his hands behind his back. PO Caccavale moved his body down and put his arms around § 87(2)(b)'s mid-section to get leverage. PO Caccavale pushed and ran with § 87(2)(b) to take him off balance. They moved from the sidewalk and went to the ground between two parked cars in the street, landing on the pavement. § 87(2)(b) landed on his stomach and PO Caccavale landed partially on top of him. PO Caccavale handcuffed § 87(2)(b) within five to ten seconds. PO Caccavale did not remember making any contact with a parked vehicle before going to the ground. PO Caccavale never slammed § 87(2)(b) against a parked vehicle before going to the ground.

PO Zambrano (Board Review 03) stated that § 87(2)(b) grabbed his jacket or sweater after PO Zambrano pushed either § 87(2)(b) or § 87(2)(b). § 87(2)(b) told PO Zambrano, "You don't fucking touch her. You're not stronger than me." PO Caccavale came to where PO Zambrano and § 87(2)(b) were positioned. PO Zambrano grabbed § 87(2)(b)'s right arm and PO Caccavale grabbed § 87(2)(b)'s left arm. PO Zambrano and PO Caccavale attempted to handcuff § 87(2)(b) but § 87(2)(b) resisted by flexing his arms and moving them in front of his body. § 87(2)(b) told the officers, "You're not fucking strong enough, you can't take me down." § 87(2)(b), PO Zambrano, and PO Caccavale all fell to the ground on the sidewalk as a result of a struggle to place § 87(2)(b) into handcuffs. PO Zambrano and PO Caccavale did not do anything aside from try to place § 87(2)(b)'s arms behind his back and overcome his resistance. § 87(2)(b) did not do anything aside from flex his arms and move them in front of his body. PO Zambrano did not think that he, PO Caccavale, and § 87(2)(b) fell due to actions taken by any individual, but that they simply lost their balance. PO Zambrano landed on his right side on the ground. § 87(2)(b) landed on top of PO Zambrano. PO Caccavale was on the ground next to PO Zambrano and § 87(2)(b). On the ground, PO Zambrano and PO Caccavale placed § 87(2)(b)'s hands behind his back and handcuffed him. PO Zambrano never saw PO Caccavale strike § 87(2)(b) against a vehicle or use the a vehicle to cause injury during the struggle.

TRI reports prepared by PO Caccavale and PO Zambrano (Board Reviews 11 and 12) noted that § 87(2)(b) used hand strikes, wrestling/grappling, and pushing and shoving against PO Caccavale, and used hand strikes and pushing/shoving against PO Zambrano. The reports indicated that PO Caccavale and PO Zambrano used a forcible takedown to overcome active resistance and in defense of themselves.

§ 87(2)(b)'s medical records (Board Reviews 13 and 14) noted that § 87(2)(b) complained of pain to his right side after being tackled by officers. § 87(2)(b) had minor bruising and no other visible injuries.

The reasonableness of the use of force is based upon the totality of the circumstances known by the MOS at the time of the use of force, Patrol Guide Procedure 221-01, "Force Guidelines" (Board Review 09).

Officers should apply no more than the reasonable force necessary to gain control, Patrol Guide Procedure 221-02, "Use of Force" (Board Review 10).

§ 87(2)(g)

§ 87(2)(g)

Allegation (H) Force: Police Officer Michael Caccavale used a chokehold against § 87(2)(b)

Allegation (I) Force: Police Officer Michael Caccavale restricted § 87(2)(b)'s breathing.

§ 87(2)(b) (Board Review 01) stated that, after PO Caccavale placed him into handcuffs, PO Caccavale stood up and flipped him onto his back on the ground. PO Caccavale placed his right knee onto § 87(2)(b)'s throat and his left foot onto § 87(2)(b)'s lower abdomen. § 87(2)(b)'s breathing was restricted for 30 seconds while PO Caccavale's knee was on his throat. PO Caccavale lowered his knee to § 87(2)(b)'s chest and § 87(2)(b) could breathe again. Additional officers arrived as backup shortly after.

As noted above, § 87(2)(b) and § 87(2)(b) did not provide statements regarding this incident.

PO Caccavale (Board Review 02) denied that he ever placed his knee against § 87(2)(b)'s throat and his foot on his abdomen. PO Caccavale denied that he ever did anything to restrict § 87(2)(b)'s breathing. § 87(2)(b) never complained that he could not breathe.

PO Zambrano's statement (Board Review 03) was consistent with PO Caccavale's. § 87(2)(b)'s medical records (Board Reviews 13 and 14) did not note any injuries to his neck. There was no indication that § 87(2)(b) complained to medical personnel that officers restricted his breathing.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This was § 87(2)(b)'s first complaint at the CCRB (Board Review 15).
- This was § 87(2)(b)'s first complaint at the CCRB (Board Review 16).
- This was § 87(2)(b)'s first complaint at the CCRB (Board Review 17).
- PO Caccavale has 14 allegations stemming from six complaints at the CCRB over his eight year tenure with the NYPD. None of the allegations were substantiated.
 - PO Caccavale had five previous allegations of physical force in CCRB case numbers 201304936, 201311668, 201402178, 201500402, and 201700219, none of which were substantiated.
- PO Zambrano has eight allegations stemming from five complaints over his 12 year tenure with the NYPD. None of the allegations were substantiated.
 - In CCRB case number 200905922, an allegation of physical force was exonerated.

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation because arrests were made and no desk appearance tickets were issued.

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____

Signature

Print Title & Name

Date